GENDER EQUITY IN ISLAM

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WAMY Studies on Islam

Gender Equity in Islam[1]

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I. Introduction & Methodology

When dealing with the Islamic perspective of any topic, there should be a clear distinction between the *normative* teachings of Islam and the *diverse cultural* practices among Muslims, which may or may not be consistent with them. The focus of this paper is the normative teachings of Islam as the criteria to judge Muslim practices and evaluate their compliance with Islam. In identifying what is "Islamic," it is necessary to make a distinction between the *primary sources* of Islam (the Qur'an and the Sunnah) and legal opinions of scholars on specific issues, which may vary and be influenced by their times, circumstances, and cultures. Such opinions and verdicts do not enjoy the infallibility accorded to the primary and revelatory sources. Furthermore, *interpretation* of the primary sources should consider, among other things:

(a) The *context* of any text in the Qur'an and the Sunnah. This includes the general context of Islam, its teachings, its worldview, and the context of the surah and section thereof.
(b) The *occasion* of the revelation, which may shed light on its meanings,
(c) The role of the *Sunnah*[2] in explaining and defining the meaning of the Qur'anic text.

This paper is a brief review of the position and role of woman in society from an Islamic perspective. The topic is divided into spiritual, economic, social, and political aspects.

II. The Spiritual Aspect

1. According to the Qur'an, men and women have the same *spiritual-human* nature:

> *O mankind: Reverence your Guardian-Lord Who created you from a single person created of like nature his mate and from them twain scattered (like seeds) countless men and women; reverence Allah through Whom you demand your mutual (rights) and (reverence) the wombs (that bore you): for Allah ever watches over you.* (Qur'an 4:1)

> *It is He who created you from a single person and made his mate of like nature in order that he might dwell with her (in love). When they are united she bears a light burden and*

carries it about (unnoticed). When she grows heavy they both pray to Allah their Lord (saying): "If You give us a goodly child we vow we shall (ever) be grateful." (Qur'an 7:189)

(He is) the Creator of the heavens and the earth: He has made for you pairs from among yourselves and pairs among cattle: by this means does He multiply you: there is nothing whatever like unto Him and Her is the One that hears and sees (all things.) (Qur'an 42:11))

2. Both genders are recipients of the "*divine breath*" since they are created with the same human and spiritual nature (*nafsin-waahidah*):

But He fashioned him in due proportion and breathed into him something of His spirit. And He gave you (the faculties of) hearing and sight and feeling (and understanding): little thanks to you give![3] (Qur'an 15:29)

3. Both genders are *dignified* and are *trustees* of Allah on earth.

We have honored the children of Adam, provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors above a great part of Our Creation. (Qur'an 17:70)

Behold your Lord said to the angels: "I will create a vicegerent on earth." They said "Will you place therein one who will make mischief therein and shed blood? Whilst we do celebrate Your praises and glorify Your holy (name)?" He said: "I know what you do not." (Qur'an 2:30)

4. According to the Qur'an, woman is not blamed for the "*fall of man.*" Pregnancy and childbirth are not seen as punishments for "eating from the forbidden tree." On the contrary, the Qur'an considers them to be grounds for love and respect due to mothers.

In narrating the story of Adam and Eve, the Qur'an frequently refers to both of them, never singling out Eve for the blame:

O Adam! Dwell you and your wife in the garden and enjoy (its good things) as you [both] wish: but approach not this tree or you [both] run into harm and transgression. Then began Satan to whisper suggestions <u>to them</u> bringing openly before <u>their minds</u> all their shame that was hidden <u>from them</u>

(before): he said "Your Lord only forbade you this tree lest you [both] should become angels or such beings as live forever." And he swore to them both that he was their sincere adviser. So by deceit he brought about their fall: when they tasted of the tree their shame became manifest to them and they began to sew together the leaves of the garden over their bodies. And their Lord called unto them: "Did I not forbid you that tree and tell you that Satan was an avowed enemy unto you?" They said: "Our Lord! We have wronged our own souls: if you forgive us not and bestow not upon us Your mercy we shall certainly be lost." (Allah) said: "Get you [both] down with enmity between yourselves. On earth will be your dwelling-place and your means of livelihood for a time." He said: "Therein shall you [both] live and therein shall you [both] die; and from it shall you [both] be taken out (at last)." O you children of Adam! We have bestowed raiment upon you to cover your shame as well as to be an adornment to you but the raiment of righteousness that is the best. Such are among the signs of Allah that they may receive admonition! O you children of Adam! Let not Satan seduce you in the same manner as he got your parents out of the garden stripping them of their raiment to expose their shame: for he and his tribe watch you from a position where you cannot see them: We made the evil ones friends (only) to those without faith. (Qur'an 7:19-27)[4]

On the question of pregnancy and childbirth, the Qur'an states:

And We have enjoined on the person (to be good) to his/her parents: in travail upon travail did his/her mother bear his/her and in years twain was his/her weaning: (hear the command) "Show gratitude to Me and to your parents: to Me is (your final) Goal. (Qur'an 31:14)

We have enjoined on the person kindness to his/her parents: in pain did his/her mother bear him/her and in paid did she give him/her birth. The carrying of the (child) to his/her weaning is (a period of) thirty months. At length when he/she reaches the age of full strength and attains forty years he/she says "O my Lord! Grant me that I may be grateful for Your favor which You have bestowed upon me and upon both my parents and that I may work righteousness such as You may approve; and be gracious to me in my issue. Truly have I turned to You and truly do I bow (to You) in Islam [submission]." (Qur'an 46:15)

5. Men and women have the same religious and moral *duties* and responsibilities. They both face the consequences of their deeds:

> *And their Lord has accepted of them and answered them: "Never will I suffer to be los the work of any of you be it male or female: you are members of one another ..."* (Qur'an 3:195)

> *If any do deeds of righteousness be they male or female and have faith they will enter paradise and not the least injustice will be done to them.* (Qur'an 4:124)

> *For Muslim men and women and for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise, for them has Allah prepared forgiveness and great reward.* (Qur'an 33:35)

> *One Day shall you see the believing men and the believing women how their Light runs forward before them and by their right hands: (their greeting will be): "Good news for you this Day! Gardens beneath which flow rivers! To dwell therein forever! This is indeed the highest Achievement!"* (Qur'an 57:12)

6. Nowhere dow the Qur'an state that one gender is superior to the other. Some mistakenly translate "*qiwamah*" or responsibility for the family as superiority. The Qur'an makes it clear that the sole basis for *superiority* of any person over another is piety and righteousness not gender, color, or nationality:

> *O mankind! We created you from a single (pair) of a male and a female and made you into nations and tribes that you may know each other. Verily the most honored of you in the sight of Allah is (one who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).* (Qur'an 49:13)

7. The absence of women as prophets or "Messengers of Allah" in prophetic history is due to the *demands and physical* suffering associated with the role of messengers and prophets and not because of any spiritual inferiority.[5]

III. The Economic Aspect

1. The Islamic Shari'ah recognizes the full *property* rights of women before and after marriage. A married woman may keep her *maiden* name.[6]

2. Greater *financial security* is assured for women. They are entitled to receive marital gifts, to keep present and future properties and *income* for their own security. No married woman is required to spend a penny from her property and income on the household. She is entitled to full financial *support* during *marriage* and during the *waiting* period (*'iddah*) in case of divorce.[7] She is also entitled to child support. Generally, a Muslim woman is guaranteed support in *all stages* of her life, as a daughter, wife, mother, or sister. These additional advantages of women over men are somewhat balanced by the provisions of the inheritance which allow the male, in most cases, to inherit twice as much as the female. This means that the male inherits more but is responsible financially for other females: daughters, wive, mother, and sister, while the female (i.e., a wife) inherits less but can keep it all for investment and financial security without any legal obligation so spend any part of it even for her own sustenance (food, clothing, housing, medication, etc.).

IV. The Social Aspect

First: As a Daughter

1. The Qur'an effectively ended the cruel pre-Islamic practice of female infanticide (*wa'd*):

> *When the female (infant) buried alive is questioned for what crime she was killed.* (Qur'an 81-8-9)

2. The Qur'an went further to rebuke the unwelcoming attitudes among some parents upon hearing the news of the birth of a baby girl, instead of a baby boy:

> *When news is brought to one of them of (the birth of) a female (child) his face darkens and he is filled with inward grief! With shame does he hide himself from his people because of the bad news he has had! Shall he retain her on (sufferance and) contempt or bury her in the dust? Ah! what an evil (choice) they decide on!* (Qur'an 16:58-59)

3. Parents are duty bound to support and show *kindness* and justice to their daughters. Prophet Muhammad said:

> "Whosoever has a daughter and he does not bury her alive, does not insult her, and does not favor his son over her, Allah will enter him into Paradise." [Ahmad][8]

> "Whosoever supports two daughters til they mature, he and I will come in the day of judgment as this (and he pointed with his two fingers held together)." [Ahmad][8]

4. *Education* is not only a right but also a responsibility of all males and females. Prophet Muhammad said:

> "Seeking knowledge is mandatory for every Muslim ("Muslim" is used here in the generic meaning which includes both males and females)."[9]

Second: As a Wife

1. *Marriage* in Islam is based on mutual peace, love, and compassion, not just the satisfaction of man's needs:

> *And among His Signs is that He created for you mates from among yourselves that you may well in tranquility with them and He has put live and mercy between your (hearts); verily in that are signs for those who reflect.* (Qur'an 30:21)

> *(He is) the Creator of the heavens and the earth: He has made for you pairs from among yourselves and pairs among cattle: by this means does He multiply you: there is nothing whatever like unto Him and He is the One that hears and sees (all things).* (Qur'an 42:11)

2. The female has the right to *accept or reject* marriage proposals. Her consent is prerequisite to the validity of the marital contract according to the Prophet's teaching. It follows that if by "arranged marriage" is meant marrying the girl without her consent, then such a marriage is nullifiable is she so wished.

> "Ibn Abbas reported that a girl came to the Messenger of God, Muhammad, and she reported that her father had forced her to marry without her consent. The Messenger of God

gave her the choice ... (between accepting the marriage or invalidating it)." (Ahmad, Hadeeth no. 2469). In another version, the girl said: "Actually I accept this marriage but I wanted to let women know that parents have no right to force a husband on them." [Ibn Majah][10]

3. The husband is *responsible* for the *maintenance, protection,* and overall *headship* of the family (*qiwamah*) within the framework of *consultation* and kindness. The mutual dependency and complementarity of the roles of males and females does not mean "subservience" by either party to the other. Prophet Muhammad helped in household chores in spite of his busy schedule.

> *The mothers shall give suck to their offspring for two whole years if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child nor father on account of his child. An heir shall be chargeable in the same way if they both decide on weaning by mutual consent and after due consultation there is no blame on them. If you decide on a foster-mother for your offspring there is no blame on you provided you pay (the mother) what you offered on equitable terms. But fear Allah and know that Allah sees well what you do.* (Qur'an 2:233)

The Qur'an urges husbands to be kind and considerate to heir wives even if they do not like them.

> *O you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness that you may take away part of the marital gift you have given them except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If you take a dislike to them it may be that you dislike a thing and Allah brings about though it a great deal of good.* (Qur'an 4:19)

Prophet Muhammad taught:

> " I command you to be kind to women ..."[11]

> "The best of you is the best to his family (wife) ..."[12]

Marital *disputes* are to be handled privately between the parties whenever possible, in steps (without excesses or cruelty). If disputes are not resolved then family mediation can be resorted to.

Divorce is seen as the last resort, which is permissible but not encouraged. Under no circumstances does the Qur'an encourage, allow or condone family violence or physical abuse and cruelty. The maximum allowed in extreme cases is a gentle tap that does not even leave a mark on the body while saving the marriage from collapsing.[13]

5. *Forms* of marriage dissolution include mutual agreement, the husband's initiative, the wife's initiative (if part of her marital contract, court decision on the wife's initiative (for a cause), and the wife's initiative without a "cause" provided that she returns the marital gift to her husband (*khul'* [divestiture]).[14]

6. Priority for *custody* of young children (up to the age of about seven) is given to the mother. A child later chooses between his mother and father (for custody purposes). Custody questions are to be settled in a manner that balances the interests of both parents and well-being of the child.[14]

Question of Polygyny (Polygamy)

1. One of the common myths is to associate polygyny with Islam as if it were introduced by Islam or is the norm according to its teachings. While no text in the Qur'an or Sunnah states that either monogamy or polygyny is the norm, demographic data indicates that monogamy is the norm and polygyny is the exception. In almost all countries and on the global level the numbers of men and women are almost even, with women's numbers slightly more than men.

As such, it is a practical impossibility to regard polygyny as the norm since it assumes a demographic structure of at least two thirds females, and one third males (or 80 percent females and 20 percent males if four wives per male is the norm!). No Islamic "norm" is based on an impossible assumption.[15]

2. Like many peoples and religions, however, Islam did not out-law *polygyny* but regulated it and restricted it. It is *neither required nor encouraged*, but simply permitted and not outlawed. Edward Wester-

marck gives numerous examples of the sanctioning of polygyny among Jews, Christians, and others.[16]

3. The only passage in the Qur'an (4:3) which explicitly mentioned polygyny and restricted its practice in terms of the number of wives permitted and the requirement of justice between them was revealed after the Battle of Uhud in which dozens of Muslims were martyred leaving behind widows and orphans. This seems to indicate that the intent of its continued permissibility is to deal with individual and collective *contingencies* that may arise from time to time (i.e., imbalances between the number of males and females created by wars). This provides a *moral, practical,* and humane solution to the problems of widows and orphans who are likely to be more vulnerable in the absence of a husband/father figure to look after their needs: financial, companions, proper rearing, and other needs.

> *If you fear that you shall not be able to deal justly with the orphans marry women of your choice two or three or four; but if you fear that you shall not be able to deal justly (with them) then only one ...* (Qur'an 4:3)

4. All parties involved have *options*: to reject marriage proposals as in the case of a proposed second wife or to seek divorce or *khul'* (divestiture) as in the case of a present wife who cannot accept to live with a polygynous husband.

While the Qur'an allowed polygyny, it did not allow *polyandry* (multiple husbands of the same woman). Anthropologically speaking, polyandry is quite rare. Its practice raises thorny problems related to the lineal identity of children, and incompatibility of polyandry with feminine nature.[15]

Third: As a Mother

1. Kindness to parents (especially mothers) is next to worship of Allah:

> *Your Lord has decreed that you worship none but Him and that you be kind to parents. Whether one or both of them attain old age in you life say not to them a word of contempt nor repel them but address them in terms of honor.* (Qur'an 17:23)

And We have enjoined on the human (to be good) to his/her parents: in travail upon travail did his/her mother bear him/her and in years twain was his/her waning: (hear the command) "Show gratitude to Me and to your parents: to Me is (your final) destiny." (Qur'an 31:14)

2. Mothers are accorded a *special place* of honor in *Hadeeth* too:

A man came to the Prophet Muhammad asking: O Messenger of Allah, who among the people is the most worthy of my good companionship? The Prophet said, your mother. The man said then who is next: the Prophet said, Your mother. The man further asked, Then who is next? Only then did the Prophet say, Your father. (al Bukhari)[17]

Fourth: As a Sister in Faith (Generally)

1. According to the Prophet Muhammad's saying:

"Women are but sisters (or the other half) of men (*shaqa'iq*)."[18]

2. Prophet Muhammad taught kindness, care, and respect of women in general:

"I commend you to be kind to women"[19]

Fifth: Issue of Modesty and Social Interaction

1. There exists, among Muslims a big *gap* between the ideal of the real. Cultural practices on both extremes do exist. Some Muslims emulate non-Islamic cultures and adopt the modes of dress, unrestricted mixing and behavior resulting in corrupting influences of Muslims and endangering the family's integrity and strength. On the other hand, in some Muslim cultural undue and excessive restrictions is not seclusion are believed to be the ideal. Both extremes seem to contradict the normative teachings of Islam and are not consistent with the virtuous yet participative nature of the society at the time of the Prophet Muhammad.[12]

2. *Parameters* of proper modesty for males and females (dress and behavior) are based on revelatory sources (the Qur'an and authentic

Sunnah and as such are seen by believing men and women as *divinely-based* guidelines with legitimate aims, and divine wisdom behind them. They are not male-imposed or socially imposed restrictions.

3. The notion of near total *seclusion* of women is alien to the prophetic period. Interpretation problems in justifying seclusion reflect, in part, *cultural influences and circumstances in different Muslim countries.*

V. The Legal/Political Aspect

1. Both genders are entitled to *equality* before the law and courts of law. Justice is genderless.

Most references to testimony (witness) in the Qur'an do not make any reference to gender. Some references fully equate the testimony of males and female.

> *And for those who launch a charge against their spouses and have (in support) no evidence but their own their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth; And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a life. But it would avert the punishment from the wife is she bears witness four times (with an oath) by Allah that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of allah on herself is (her accuser) is telling the truth.* (Qur'an 24:6-9)

One reference in the Qur'an distinguishes between the witness of a male and a female. It is useful to quote this reference and explain it in its own context and in the context of other references to testimony in the Qur'an.

> *O you who believe! When you deal with each other in transactions involving future obligations in a fixed period of time reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as Allah has taught him so let him write. Let him who incurs the liability dictate but let him fear his Lord Allah and not diminish aught of what he owes. If the party liable is mentally deficient or weak or unable himself to dictate let his guardian dictate faithfully. And get two witnesses out of your own men*

and if there are not two men then a man and two women such as you choose for witnesses so that if one of them errs the other can remind her. The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period whether it be small or big: it is just in the sight of Allah more suitable as evidence and more convenient to prevent doubts among yourselves; but if it be a transaction which you carry out on the spot among yourselves there is no blame on you if you reduce it not to writing. But take witnesses whenever you make a commercial contract; and let neither scribe nor witness suffer harm. If you do (such harm) it would be wickedness in you. So fear Allah; for it is Allah that teaches you. And Allah is well acquainted with all things. (Qur'an 2:282)

A few comments on this text are essential in order to prevent common misinterpretations:

a) It cannot be used as an argument that there is a general rule in the Qur'an that the worth of a female's witness is only half the male's. This presumed "rule" is voided by the earlier reference (24:6-9) which explicitly equates the testimony of both genders in the issue at hand.

b) The context of this passage (*ayah*) relates to the testimony on financial transactions which are often complex and laden with business jargon. The passage does not make a blanket generalization which would otherwise contradict 24:6-9 cited earlier.

c) The reason for variations in the number of male and female witnesses required is given in the same passage. No reference was made to the inferiority or superiority of one gender's witness or the other's. The only reason given is to corroborate the female's witness and prevent unintended errors in the perception of the business deal. The Arabic term used in this passage (*tadhilla*) means literally "loses the way," "gets confused or errs." But are females the only gender that may err and need corroboration of their testimony. Definitely not, and this is why the general rule of testimony in Islamic law is to have two witnesses even if they are both males.

This leaves us with only one reasonable interpretation that in an ideal Islamic society as envisioned by Islamic teachings the female members will give priority to their feminine functions as wives, mothers, and pioneers of charitable works. This emphasis, while making them more experienced in the inner function of the family

and social life, may not give them enough exposure and experience to business transactions and terminology, as such a typical Muslim woman in a truly Islamic society will not normally be present when business dealings are negotiated and if may present may not fully understand the dealings. In such a case, corroboration by two women witnesses helps them remind one another and as such give an accurate account of what happened.

d) It is useful to remember that it is the duty of a fair judge, in a particular case, to evaluate the credibility, knowledge and experience of any witness and the specific circumstances of the case at hand.

2. The general rule in social and political life is participation and collaboration of males and female in public affairs:

> *The believers, men and women, are protectors one of another; they enjoin what is just and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His apostle. On them will Allah pour His mercy: for Allah is Exalted in power, Wise.* (Qur'an 9:71)

3. Now there is sufficient *historical evidence* of participation by Muslim women in the choice of rulers, in public issues, in lawmaking, in administrative positions, in scholarship and teaching, and even in the battlefield. Such involvement in social and political affairs was done without losing sight of the complementary priorities of both genders and without violating Islamic guidelines of modesty and virtue.

4. There is no *text* in the Qur'an or the Sunnah that precludes women from any position of leadership, except in leading prayer due to the *format* of prayer as explained earlier and the *headship of state* (based on the common and reasonable interpretation of *Hadeeth*).

The head of state in Islam is not a ceremonial head.He leads public prayers in some occasions, constantly travels and negotiates with officials of other states (who ar mostly males). He may be involved in confidential meetings with them. Such heavy involvement and its necessary format may not be consistent with Islamic guidelines related to the interaction between the genders and the priority of feminine functions and their value to society. Furthermore, the conceptual and philosophical background of the critics of this limited exclusion is that of individualism,ego satisfaction, and the rejection of the validity of divine guidance in favor of other man-made philosophies, values,

or "ism." The ultimate objective of a Muslim man or woman is to selflessly serve Allah and the ummah in whatever appropriate capacity.

Conclusion:

1. Textual injunctions on gender equity and the prophetic model are sometimes *disregarded* by some if not most Muslims *individually* and *collectively*. Revision of practices (not divine injunctions) is needed. It is not the revelatory Qur'an and the Sunnah that need any editing or revision. What needs to be reexamined are fallible human interpretations and practices.

2. Diverse practice in Muslim countries often reflect *cultural influences* (local or foreign), more so than the letter or spirit of the Shari'ah.

3. Fortunately, there is an emerging *trend* for the betterment of our understanding of gender equity, based on the Qur'an and *Hadeeth*, not on alien and imported un-Islamic or non-Islamic values and not on the basis of the existing oppressive and unjust status quo in many parts of the Muslim world.

Endnotes

1. The term equity is used instead of the common expression "equality" which is sometimes mistakenly understood to mean absolute equality in each and every detailed item of comparison rather than the overall equality. Equity is used here to mean justice and overall equality of the totality of rights and responsibilities of both genders. It does allow for the possibility of variations in specific items within the overall balance and equality. It is analogous to two persons possessing diverse currencies amounting, for each person to the equivalence of US$1000. While each of the two persons may possess more of one currency than the other, the total value still comes to US$1000 in each case. It should be added that from an Islamic p erspective,the roles of men and women are complementary and cooperative rather than competitive.

2. The Sunnah refers to the words, actions, and confirmations (con-sent) of the Prophet Muhammad in matters pertaining to the meaning and practice of Islam. Another common term which some authorities consider to be equivalent to the Sunnah is the *Hadeeth* (plural: *Ahadeeth*) which literally means "sayings."

3. In both Qur'anic references, 15:29 and 32:9-9, the Arabic terms used are *basharan* and *al Insaan* both mean a human being or a person. English translations do not usually convey this meaning and commonly use the terms "man" or the pronoun" him" to refer to "person" without a particular gender identification. Equally erroneous is the common translation of *Bani Adam* into "sons of Adam" or "men" instead of a more accurate term "children of Adam."

4. The emphasis is ours. The explanatory "both"{ was added whenever the Qur'anic Arabic text addresses Adam and Eve, like *"lahoma, akala, akhrajahoma."* This was done in order to avoid misinterpreting the English term "you" to mean an address to a singular person. For the Biblical version of the story and its implications, see *The Holy Bible*, RSV, American Bible Society, New York: 1952: Genesis, chapters 2-3, especially 3:6, 12, 17-17; Levi-ticus 12:1-7; 15:19-30; and Timothy 2:11-14.

5. A common question raised in the West is whether a Muslim woman can be ordained as a priest as more "liberal" churches do? It should be remembered that there is no "church" or "priesthood" in Islam. The question of "ordaining" does not arise. However, most of the common "priestly" functions such as religious education, spiritual and social counseling are not forbidden to Muslim women in a proper Islamic context. A woman, however, may not lead prayers since Muslim prayers involve prostrations and body contact. Since the prayer leader is supposed to stand in front of the congregation and may move forward in the middle of crowded rows, it would be both inappropriate and uncomfortable for a female to be in such a position and prostrate, hands, knees and forehead on the ground with rows of men behind here. A Muslim woman may be an Islamic scholar, In the early days of Islam, there were several examples of female scholars who taught both genders.

6. This contrast with the legal provisions in Europe which did not recognize the right until nearly 13 centuries after Islam. "By a series of acts starting with the Married Women's Property Act in 1879, amended in 1882 and 1997, married women achieved the right to won property and to enter into contracts on a par with spinsters, widows, and divorcees." See *Encyclopedia Britannica*, 1968, vol. 23, p. 624.

7. This period is usually three months. If the wife is pregnant, it extends until childbirth.

8. Ahmad Ibn Hanbal (compiler), *Musnad Ibn Hanbal*, Dar al Ma'arif, Cairo: 1950 and 1955, vols. 3 and 4. Hadith nos. 1957 and 2104.

9. Narrated in Al Bayhaqi and Ibn Majah, quoted in M. S. Afifi, *Al Mar'ah wa Huququha fi al Islam* (in Arabic), Maktabat al Nahdhah, Cairo: 1988, p. 71.

10. Ibn Majah (compiler), *Sunan Ibn Majah*, Dar Ihya' al Kutub al Arabiyah, Cairo: 1952, vol. I, Hadith #1873.

11. *Matn al Bukhari*, op. cit., vol. 3, p. 257.

12. *Riyad al Saliheen*, op. cit, pp. 140.

13. In the event of a family dispute, the Qur'an exhorts the husband to treat his wife kindly and not to overlook her positive aspects. If the problem relates to the wife's behavior, her husband may exhort her and appeal for reason. In most cases, this measure is likely to be suf-ficient. In cases where the problem continues, the husband may express his displeasure in another peaceful manner by sleeping in a separate bed from hers. There are cases, however where a wife persists in deliberate mistreatment of her husband and disregard for her marital obligations. Instead of divorce, the husband may resort to another measure that may save the marriage, at least in some cases. Such a measure is more accurately described as a gentle tap on the body, but never on the face, making it more of a symbolic measure than a punitive one. Following is the related Qur'anic text:

> *Men are the protectors and maintains of women because Allah has given the one more (strength) than the other and because they support them from their means. Therefore the righteous women are devoutly obedient and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill conduct, admonish them (first), (next) refuse to share their beds (and last) beat them (lightly); but if they return to obedience seek not against them means (of annoyance): for Allah is Most High, Great (above you all).* (Qur'an 4:34)

Even here, that maximum measure is limited by the following:

a) It must be seen as a rare exception to the repeated exhortation of mutual respect, kindness and good treatment discussed earlier. Based on the Qur'an and *Hadeeth*, this measure may be used in the case of lewdness on the part of the wife or extreme refraction and rejection of the husband's reasonable requests on a consistent basis (*nushuz*). Even then other measures such as exhortation should be tried first.

b) As defined by the *Hadeeth*, it is not permissible to strike anyone's face, cause any bodily harm or even be harsh. What the *Hadeeth* qualified as *dharban ghayra mubarrih* or light beating was interpreted by early jurists as a (symbolical) use of the *miswak* (a small natural toothbrush).

They further qualified permissible "beating" as beating that leaves no mark on the body. It is interesting that this latter fourteen centuries old qualifier is the criterion used in contemporary American law to separate a light and harmless tap or strike from "abuse" in the legal sense. This makes it clear that even this extreme, last resort and "lesser of the two evils" measure that may save the marriage does not meet the definitions of"physical abuse," "family violence," of "wife battering" in the twentieth century laws in liberal democracies, where such extremes are commonplace that they are seen as national concerns.

c) Permissibility of such symbolical expression of the seriousness of continued refraction does not imply its desirability. In several *Ahadeeth*, Prophet Muhammad discouraged this measure. Among his sayings: "Do not beat the female servants of Allah," "Some (women visited my family complaining about their husbands (beating them). These (husbands) are not the best of you," "[Is it not a shame that] one of you beats his wife like [an unscrupulous person] beats a slave and maybe he sleeps with her at the end of the day." See *Riyad Al Saliheen*, op cit., pp. 130-140. In another *Hadeeth*, the Prophet said:

> "How does anyone of you beat his wife as he beats the stallion camel and then he may embrace (sleep with) her?" *Shaheeh Al Bukhari*, op. cit., vol. 8, *Hadeeth* no. 68, pp. 42-43.

d) True following of the Sunnah is to follow the example of the Prophet Muhammad, who never resorted to that measure regardless of the circumstances.

e) Islamic teachings are universal in nature. They respond to the needs and circumstances of diverse times, cultures, and circumstances but unnecessary in others. Some measures may work in some cases, cultures, or with certain persons but may not be effective in others. By definition a "permissible" it is neither required, encouraged, or forbidden. In fact, it may be better to spell out the extent of permissibility such as in the issue at hand, than leaving it unrestricted and unqualified or ignoring it all together. In the absence of strict qualifiers, persons may interpret the matter in their own way lending to excesses and real abuse.

f) Any excess, cruelty, family violence, or abuse committed by any "Muslim" can never be traced, honestly, to any revelatory text (Qur'an and *Hadeeth*). Such excesses and violations are to be blamed on the person(s) himself as it shows that he is paying lip service to Islamic teachings and injunctions and is failing to follow the true Sunnah of the Prophet.

14. For more details on marriage dissolution and custody of children, see A. Abd al Ati, *Family Structure in Islam*, Indianapolis: American Trust Publications, 1977, pp. 217-49.

15. For more details on the issue of polygyny, see Jamal A. Badawi, *Polygyny in Islamic Law*, Plainfield, IN: American Trust Publications; also *Islamic Teachings* (audio series), Islamic Information Foundation, 1982, album IV.

16. See for example, Edward A. Westermarck, *The History of Human Marriage*, 4th ed., (London: Macmillan, 1925), vol 3, pp. 42-43; also *Encyclopedia Biblica*, Rev. T. K. Cheyene and J. S. Black, eds.) (London: Macmillan, 1925), vol. 3, p 2946.

17. A. M. B. I. Al- Bukhari (compiler) *Matn al Bukhari*, Cairo: Dar Ihya al Kutub al Arabiyah, n.d., vol. 3 Kitab al Adab, p. 47. Translated by the author. For a similar English translation of this *Hadeeth*, see *Sahih al Bukhari*, translated by M. M. Khan, Maktabat al Riyadh al Hadeethah, Riyadh, Saudi Arabia, 1982, col. 8, the Book of al Adab, Hadeeth no. 2, p. 2.

18. Narrated by Aisha, collected by Ibn Asakir in *Silsilat Kunuz al Sunnah I, Al-Jami Al Sagheer*, 1st ed. 1410 AH. A computer program.

19. *Riyadh al Saliheen*, op. cit., p. 139.

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5. *The History of Human Marriage,* vol. 3, Edward A. Westermarck, London: Macmillan, 1925